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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,449	09/26/2003	Camillo Mele	133569-00011-1	8441
3705	7590	11/02/2005	EXAMINER	
ECKERT SEAMANS CHERIN & MELLOTT 600 GRANT STREET 44TH FLOOR PITTSBURGH, PA 15219			OMGBA, ESSAMA	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,449

Applicant(s)

MELE, CAMILLO

Examiner

Essama Omgba

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7 and 9-25 is/are rejected.
- 7) ☒ Claim(s) 3, 5 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6, 7 and 9-22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurenson (FR 2454752) in view of Applicant's Admitted Prior Art (AAPA).

With regards to claims 1, 2, 4, 6, 7, 12-14, 16, 17, 24 and 25, Laurenson discloses a method of making a decorative arrangement comprising providing a thick layer of any known hardenable malleable material (page 2, line 8-10) supported on a rigid board of wood or plastic and securing a plurality of decorative elements to the material before it dries out and hardens, see abstract. Laurenson does not specifically disclose the hardenable material as being a wet foam, however wet foam materials that harden into rigid foam are old and well known in the art as attested by Applicant's Admitted Prior Art to be known as AAPA, page 1-3 and page 8, lines 4-7. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used wet foam as the hardenable material in the method of Laurenson, in light of the teachings of AAPA, in order to achieve the benefits of using such known and readily available known wet foam. Applicant should note that rigid foams are widely used in the floral industry and that using preformed rigid foam as a support structure is

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an obvious matter of design choice wherein no stated problem is solved or unexpected results obtained in using preformed rigid foam as support structure versus any suitable support structure. Also the recitation of wetting the wet foam in claims 24 and 25 is redundant as wet foam is evidently wet. Applicant should also note that the recitation of the dried nodule being used as a decorative rigid foam is considered intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

For claims 9-11 and 18, Applicant should note that the decorative elements of Laurensen include live vegetation, dry vegetation and artificial vegetation. Furthermore it is within the general knowledge of one of ordinary skill in the art to aesthetically present the decorative arrangement.

For claim 15, Applicant should note that it is within the general knowledge of one of ordinary skill in the art to appropriately dry wet foam.

For claims 19 and 20, Applicant should note that the mere duplication of the essential method steps involves only routine skill in the art.

For claim 21, Applicant should note that it is within the general knowledge of one of ordinary skill in the art to appropriately fashion the decorations.

For claim 22, see figure 5 of Laurenson.

3. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laurenson/AAPA as applied to claim 1 above, and further in view of Harris (US Patent 4,941,572).

Laurenson/AAPA discloses a method of making a decorative arrangement as shown above except for providing the wet foam in a plurality of different colors. However it is known to provide such display foam in different colors to enhance the appearance thereof as attested by Harris, see column 4, lines 60-64. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the foam of Laurenson/AAPA in different colors, in light of the teachings of Harris, in order to enhance the appearance of the foam.

Allowable Subject Matter

4. Claims 3, 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed August 17, 2005 have been fully considered but they are not persuasive except for claims 3, 5 and 8.

In response to Applicant's argument that Applicant's invention has no requirement of a plurality of nails in a number sufficient to constitute a reinforcement for

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the malleable material as Applicant's wet foam is partially cured to create a nodule that is self-supporting, the examiner submits that Laurensen disclosed that the malleable material can be laid on the support "armed" (use of supporting nails) or not, see page 2, paragraph 4 of the translation submitted by applicant and page 2, lines 21-24 of Laurensen. Furthermore it is noted that the features upon which Applicant relies (i.e., the partially cured wet foam being self-supporting) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The basis for the rejection of claims 2 and 4 has been outlined in the rejections above. Furthermore for claim 4, surface mounting the flowers or having the stems of flowers penetrate the malleable material is an obvious matter of design choice and the malleable material of Laurensen can be used with either surface mounting or with the stems penetrating the material.

For the arguments regarding claim 12, please see the first paragraph of the examiner's response above.

In response to Applicant's argument that nothing in the prior art suggests the preferred temperature and drying time recited in claim 15, the examiner submits that it is within the general knowledge of one of ordinary skill in the art to determine appropriate temperature and drying time for a given foam, which will depend on the application and the particular foam used.

In response to Applicant's arguments regarding claims 18, 19, 21 and 23, the examiner submits that the recitation of those claims amount to an obvious matter of design choice. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

With regards to new claims 24 and 25, the examiner respectfully disagrees with Applicant's statement that those claims are the equivalent of claims 5 and 8 in independent form since claims 5 and 8 both require wetting the wet foam prior to partially curing the wet foam.

In view of the above remarks, the examiner maintains that a prima facie case of obviousness has been established in the instant application save for claims 3, 5 and 8.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Essama Omgba
Primary Examiner
Art Unit 3726

eo
October 29, 2005